

**2000 ANNUAL REPORT
OF THE
ATTORNEY GENERAL**

PRESENTED TO:

**THE HONORABLE WILLIAM J. JANKLOW
GOVERNOR, STATE OF SOUTH DAKOTA**

PRESENTED BY:

ATTORNEY GENERAL MARK BARNETT

SEPTEMBER 2001

The Office of Attorney General is responsible for the provision of legal services to the State. The Office is composed of two primary divisions, Legal Services and Criminal Investigation. In FY00, the Office had an annual budget of approximately 12 million dollars and 158 employees; it is the smallest Attorney General's Office in the United States.

DIVISION OF LEGAL SERVICES

Legal counsel and litigation services to the State are provided by the Appellate, Natural Resources, Litigation, Drug Prosecution, Consumer Protection, and Medicaid Fraud Control sub-divisions of the Division of Legal Services. Some litigation and projects are conducted on an inter-divisional basis. There are approximately 28 attorneys providing these services. In addition, the Legal Services Division manages the Drug Grant Program and the State Crime Statistics Analysis Center.

APPELLATE DIVISION

The Appellate Division is responsible for representing the State in all criminal appeals and habeas corpus proceedings, and for providing legal advice to many state agencies, boards and commissions. In defending criminal appeals in 2000, Appellate attorneys submitted 155 briefs¹ and presented oral argument in 24 cases in the South Dakota Supreme Court. Division lawyers also presented oral argument in four cases in the United States District Court, two cases in the Eighth Circuit Court of Appeals, and five cases in the South Dakota Circuit Courts.

Significantly during 2000, the Appellate Division was responsible for the appellate litigation of three death penalty cases, State v. Rhines, State v. Moeller and State v. Robert LeRoy Anderson. The Rhines case involved a habeas corpus challenge in

state court for a conviction of first degree murder and imposition of the death sentence. The Rhines state court habeas appeal was argued in October 1999. The South Dakota Supreme Court affirmed dismissal of the habeas petition in February 2000, and Rhines has now exhausted challenges to his conviction and sentence in South Dakota State courts. He is currently challenging his conviction and sentence in the United States District Court. At the end of 2000, there had been some preliminary filings in that court.

The Moeller case, involving a conviction of **first-degree murder and rape of a nine-year-old girl**, had previously been reversed on appeal. The Office's Litigation Division and the local state's attorney re-convicted Moeller and he was re-sentenced to death. This case was again appealed to the South Dakota Supreme Court. That Court affirmed Moeller's conviction in August 2000, and he is now challenging the conviction in State Court habeas corpus. The Appellate Division provided extensive research support on retrial, and then took on the appellate work involved in defending the conviction. We are assisting the Lincoln County State's Attorney in defending the habeas corpus case in Circuit Court.

Appellate Division attorneys performed extensive legal research in support of the prosecution of State v. Anderson I, a kidnapping prosecution, which was affirmed by the South Dakota Supreme Court in March 2000. The Division also provided legal research in support of the 1999 prosecution by the Attorney General and Chief Deputy Attorney General in State v. Anderson (II), a murder, rape and kidnapping case which resulted in the death penalty. That case was appealed in 1999, and was initially remanded to the state trial court for a hearing on a new issue. The State prevailed on this issue. Currently, the State's brief in the Anderson II case is due at the end of July 2001.

¹ These cases were filed in the South Dakota Supreme Court, the United States

Near the end of 2000, three more defendants were accused of capital crimes. In early 2001, Elijah Page and Briley Piper were sentenced to death. Darrell Hoadley was given a life sentence. These cases are mentioned because they will significantly impact our workload in 2001 and beyond, and because appeals in them are pending at this writing.

The Division's attorneys continued to litigate several cases on post-conviction use of DNA testing. One such case is now before the United States District Court. Another important issue being litigated in the South Dakota Supreme Court is the right to counsel for petitioners who bring state court habeas corpus actions.

The Appellate Division defends against state and federal habeas corpus actions brought by convicts to test the legality of their prison detention. While the local state's attorney usually defends state habeas corpus trials, the Division handled 15 state habeas corpus trials in 2000, cases originally prosecuted by this Office or cases in which the state's attorney had a conflict.

Federal habeas trials are handled directly by the Division. During 2000, the Division defended 38 federal habeas corpus requests, with no petitions being granted by the district court. One case in which habeas corpus was granted in 1999 was reversed by the Eighth Circuit Court of Appeals in 2000. Three convicts also asked for federal habeas corpus review before the Supreme Court of the United States, all of which this Division successfully resisted.

The Appellate Division is also responsible for resisting requests for permission to appeal criminal proceedings and habeas corpus denials to the South Dakota Supreme

Court. The Division successfully resisted or assisted state's attorneys in resisting 12 of the 18 requests made in 2000.

Over 170 State agencies, boards and commissions look to the Attorney General's Office for representation. Currently, 133 agencies or boards are assigned to the Appellate Division for representation. Each Division attorney has several agencies assigned to him or her. There was considerable important and time consuming litigation and transactional representation pursued by this Division on behalf of agencies in 2000. Examples include: responding to United States Justice Department complaints on behalf of the Department of Corrections; handling drivers' license revocations for refusals of blood alcohol testing; and extensive review and re-writing of agency contracts with outside parties. Various professional boards revoked at least ten licenses after administrative litigation or negotiations pursued by the Division's attorneys.

The area of teacher and school administrator misconduct, as well as other school matters, was especially active in 2000 as it was in 1999. The Division attorneys assigned to the Department of Education and Cultural Affairs pursued no less than 35 cases of alleged teacher or administrator misconduct in 2000. Not all allegations were substantiated but the Department and its Division attorneys remain vigilant in this area. The DECA attorneys also review many proposed decisions of the Office of Hearing Examiners in education matters, and assist the Secretary of Education and Cultural Affairs in making decisions in contested cases. The DECA attorneys also review matters in the area of Special Education and advise the Department and school districts as appropriate.

One Appellate Division attorney prosecutes all matters relating to stolen motor vehicles and parts. This area is particularly active during the annual Sturgis Motorcycle Rally and Races. Other very significant litigation involved defending the constitutionality of the State Cement Plant sale. This was a joint project with the Chief Deputy Attorney General.

The Division attorney assigned to the Department of Revenue continued to litigate railroad central assessment cases. He also successfully defended the constitutionality of statutes relating to non-agricultural acreage assessments; litigated applicability of gross receipts tax to cellular phone companies; litigated authorization to impose motor fuel tax on enrolled tribal members in Indian Country; litigated value of a peaking power plant assessed by the Department of Revenue; and litigated application of motor vehicle excise tax in Indian country.

The Division attorney assigned to the Department of Corrections handled approximately 30 cases that involved either prison discipline, revocation or grant of parole, or complaints about prison conditions or procedures. None of these cases led to substantive relief for the prisoner.

An active area is the processing of extradition requests by this state and other states, and also detainer requests by a state or prisoner. Extradition involves return of a fugitive to the State where he or she is alleged to have committed a crime. A detainer involves taking an alleged offender to another state for processing of charges against him or her when that person is being held in a different state for a crime committed there. This Division processed 89 extradition requests and 13 detainer requests in 2000.

Another area of significant responsibility is advice to local governments. Two Division attorneys take calls from counties, townships and municipalities who request advice. The two attorneys representing the Department of Education and Cultural Affairs take calls regarding schools from teachers, administrators, school board members, parents and other school district patrons. One Division lawyer continued to assist in monitoring an optometric study being supervised by the Optometry Board.

NATURAL RESOURCES DIVISION

The Natural Resources Division provides specialized legal counsel to state agencies in environmental, agricultural, financial, Indian law, and natural resource matters. The Division's activities are focused on state boards and agencies issuing environmental, water, and agricultural permits, or leasing state minerals lands, and on the prosecution and defense of State civil and administrative environmental and public health litigation. The Division has been providing assistance to counties concerning similar matters.

The year 2000 cases and projects of particular importance included: the establishment of drilling and operation procedures for oil and gas fields; proceedings to stop water pollution or wastewater discharges by several corporations, such as those against the city of Highmore and South Dakota Soybean Processors; successful defense of a claim against a state mining reclamation surety (Fulton State Bank v. DENR); drafting of state superfund contracts with EPA for the Gilt Edge Mine Superfund site; enforcement of underground storage tank cleanup requirements; prosecutions for inadequate sewage treatment facilities (Prairie Acre Estates and Igloo Housing Development); prosecutions of public water supplies for drinking water testing violations (Westward Ho Trailer Park); prosecutions involving pesticide applications;

the review and prosecution of water right permits such as those for LaCreek National Wildlife Refuge and Frawley Ranch, Inc.; and enforcement actions concerning discharges to surface waters, such as that against ByPork, Inc. The Division continues to represent the state in various drainage and flooding, issues including a challenge to the constitutionality of state drainage law (Fritz v. Neil); litigation involving public access to water (Parks v. Cooper); and a flood control permit and appeal involving Lake Kampeska (Lake Pelican Water District v. South Dakota Water Management Board). The Division participated in federal administrative proceedings and civil litigation in various courts in matters involving forest management activities and the pine beetle infestation in the Black Hills, as well as the listing of prairie dogs on the Endangered Species List, and state management of prairie dogs. Division attorneys have been monitoring private counsel defending the State in the takings case of SDDS, Inc. v. State of South Dakota, which is in both state and federal courts.

The Division provides counsel in matters involving Indian law, including civil and criminal jurisdiction issues. In 1999-2000, the Division litigated the claim that a tribal member could hunt without a state license in the Black Hills. It also continued the litigation in the trial courts and the Supreme Court regarding the status of lands within the 1858 Yankton Reservation boundaries. In addition, the Division continued the legal attack on the right of the Secretary of the Interior to take certain off-reservation land in central South Dakota into trust and, in an associated matter, participated in a federal administrative procedure to set limits on the right of the Secretary of the Interior to take land into trust. The Division also participated in a federal administrative proceeding concerning the extent of state public utilities jurisdiction in "Indian country." Division attorneys regularly provide legal advice to state agencies and local governments to

facilitate ongoing negotiations with tribes and to assist in the development of sound legal and policy positions with regard to Indian jurisdictional issues which frequently arise in game and fish, gaming, law enforcement, environmental, revenue, utility, health records and related areas. This work has included issues with the United States Environmental Protection Agency regarding the jurisdiction of tribes in delegation of federal environmental programs.

Division attorneys provide legal counsel in environmental financial matters. The Division assisted in preparing the financial documentation supporting Board of Water and Natural Resource drinking water and wastewater state revolving fund loans to several cities and a rural water system, including Aurora, Beresford, Bryant, Irene, Hartford, Lead, Mobridge, Sioux Falls, Sturgis, Tyndall, Whitewood, and Kingbrook Rural Water System. The Division also provided legal advice, drafted and reviewed contracts and loan agreements, and reviewed bonds issued by local governments for drinking water, wastewater, solid waste and storm sewer loans and grants made by the Board of Water and Natural Resources, and assisted the Department of Environment and Natural Resources in the implementation of the statewide waste tire cleanup program and the Governor's Spruce Up South Dakota program.

The Division's attorneys provide administrative and litigation support to other state agencies. Division attorneys drafted Attorney General legislation; reviewed Attorney General Official Opinions; were involved in the drafting of Attorney General ballot explanations; provided counsel to the Secretary of Health concerning the revocation of food establishment licenses; defended the State in various employment disputes; developed loan documents for the Governor's Office of Economic Development's new Value Added Loan Program; assisted in recent voting rights

litigation in the state and federal courts; advised the pertinent state agency with regard to abortion issues; and were involved in much of the constitutional litigation filed against the State. The Division is responsible for defending the State in the constitutional challenge to Amendment E (Sections 21 through 24 of Article XVII of the South Dakota Constitution), investigating complaints of violations related to Amendment E, and defending the State in a declaratory judgment actions regarding Amendment E (Farm Bureau, et al v. Hazeltine and Knittel v. South Dakota.) The Division is jointly responsible with the Appellate Division for the enforcement of the state's non-participating tobacco manufacturer statute which is required to project the state's tobacco settlement monies.

LITIGATION DIVISION

The Litigation Division is primarily responsible for prosecuting criminal cases throughout the state. Cases are generated in three ways. Local state's attorneys often seek assistance with major felonies. In addition, the Division investigates and initiates its own non-drug* criminal prosecutions in conjunction with the Division of Criminal Investigation. Finally, Litigation has sole jurisdiction for criminal offenses committed inside the South Dakota State Penitentiary at Sioux Falls, South Dakota.

The Divisions' four attorneys, as well as the Attorney General and Chief Deputy, handle all aspects of criminal prosecution. The bulk of time for the year 2000 was spent on homicide and homicide-related cases.

In separate trials, Dawn Frazier and 14-year-old Robert Horse were convicted of murder and kidnapping in the brutal beating death of Morning Star Standing Bear. Along with Chaske White, who earlier pleaded guilty to murder to avoid the death

penalty, Frazier and Horse picked up Standing Bear in a Rapid City bar and drove her out into the country. A Meade County jury found that Frazier drove the car, with the understanding that White and Horse were going to rape or assault Standing Bear as some type of initiation into White's gang "Real Thug Family." En route, Horse and White repeatedly asked and assured each other that "they were down" for what was about to take place. At the crime scene, White and Horse beat and kicked Standing Bear, stabbed her with a broken bottle, and impaled the side of her head with a car jack. Frazier urged them to "hurry up," and drove the gang back to Rapid City after leaving Standing Bear in a ditch to die. Horse was transferred to adult court. Separate juries convicted Frazier and Horse of kidnapping and murder, and they were sentenced to mandatory life in prison. The South Dakota Supreme Court overturned Frazier's conviction, and she is scheduled to be retried in June 2001.

Daniel Heinzelman was a 14-year-old boy living on the Duane Ingalls ranch. Ingalls had previously been married to Heinzelman's mother. Ingalls was raising Heinzelman as a stepson, although he had no legal or marital obligations to do so. One morning, Heinzelman left the field he and Ingalls were haying to return home and prepare lunch. Heinzelman grabbed and loaded the family's .25-06 rifle, removed a fan from an upstairs window, and lay in wait. When Ingalls arrived, Heinzelman placed Ingalls' head in the crosshairs of his scope and fired one round. Ingalls was killed instantly. Heinzelman then tied Ingalls' body to an ATV and dragged it into the garage to conceal it. Heinzelman was transferred to adult court. At trial, Heinzelman recanted his initial story that the death was a fox hunting accident, and claimed he did not think

* Our Drug Prosecution Unit handles the majority of narcotic cases.

the rifle was loaded. He explained that, on a number of occasions, he had gone through a similar routine of dry firing the rifle to relieve his stress and anxiety toward Ingalls. A Meade County jury rejected this claim and convicted Heinzelman of murder. He was sentenced to mandatory life.

On November 18, 1999, David Aesoph called the Hyde County Sheriff's Office to report his wife's death. He indicated that she had died due to a fall down the stairs in his residence. Tania Aesoph's autopsy indicated numerous broken ribs, abrasions about her body, a black eye, lacerated lip, and skull fractures. There were also indications of strangulation. Through the State's investigation, it was learned that Aesoph had taken out 1.7 million dollars worth of life insurance on his wife, and had previously made statements to people that he would kill her if she left him. Just prior to Tania's death, she had been with her husband at an attorney's office in Highmore to discuss a divorce. Tania Aesoph's blood was found spattered on the inside, bottom garage door panel at the David Aesoph residence. A clump of her hair was also found in the garage. One of her hairs was found on an old work coat in the washing machine, which was running when the first law enforcement officer arrived at the scene. After a three-week trial, a Lyman County jury convicted Aesoph of murder. He was sentenced to mandatory life in prison.

Glenn Walker was the boyhood friend and accomplice of convicted capital murderer Robert Leroy Anderson. In August 1994, Walker assisted Anderson in planning and abducting Larisa Dumansky from the parking lot of John Morrell's, where all three worked. Anderson raped and killed Dumansky, then buried her near Lake Vermillion in rural McCook County. A few months later, in November 1994, Walker again assisted Anderson in an attempted abduction of another young woman named

Amy Anderson (no relation) near Tea, South Dakota. This was accomplished through the use of a scheme involving tire disabling devices laid out on a road to stop potential victims. Fortunately, Amy Anderson was able to struggle free and was rescued by an oncoming vehicle. Both crimes went unsolved until Robert Leroy Anderson was investigated in 1996 for the kidnapping, rape, and murder of Piper Streyle of rural McCook County. During that investigation, Walker led law enforcement to what had been the gravesite of Dumansky. Walker pleaded guilty to the attempted kidnapping of Amy Anderson, the conspiracy to kidnap Larisa Dumansky, and accessory to kidnapping and first degree murder. He was sentenced on March 28, 2000, to two consecutive twenty-five year terms in the penitentiary, plus a five-year term to run consecutive, for a total of thirty years.

Darin Olson was a police officer for the University of South Dakota. His wife was a police officer for the city of Vermillion. While watching his infant daughter, Olson shook her to the extent of causing massive brain damage. The baby also had a fractured skull. Olson called for an ambulance and told them that his daughter had fallen off the changing table. Olson eventually admitted to investigators that he had shaken his baby girl. He pleaded guilty to first degree manslaughter and was sentenced to eighteen years in prison.

Marcus Bisonette, Dean Honomichal, and Nick Anderson were all transferred from juvenile to adult court for criminal charges arising from a riot at the Juvenile Prison in Plankinton, South Dakota. This riot resulted in approximately \$30,000 of damage to the facility. All three were convicted after a court trial of intentional damage to property in the first degree, and each received a seven-year penitentiary sentence. The execution of these sentences was suspended upon several conditions, including the

acceptance of the defendants in out-of-state treatment facilities, the successful completion of such programs, imprisonment in the state penitentiary pending acceptance in these facilities, and payment of restitution to the State for the damages done to public property.

Alan Burns was formerly employed by the South Dakota Department of Corrections at the Juvenile Prison and State Training School in Plankinton. Prior to that, he worked as a guard at the state penitentiary. Burns was convicted of having sexual intercourse with a 15-year-old girl whom he had met at the training school. After the girl was released to foster care, Burns maintained contact with her and struck up a sexual relationship. Burns was discharged from his position with the Department of Corrections, and charged with statutory rape. He pleaded guilty to that charge and was sentenced to twelve years in the state penitentiary. Seven of the twelve years were suspended on several conditions, including that he pay restitution to his victim for counseling and treatment, that he complete counseling and treatment for his sexual offender propensities, and that he has no contact with any female under 18 during the next twelve years except with advance permission from his parole or probation officer.

Anita Swedlund was an office manager for a businessman in Custer, South Dakota. She oversaw his various companies and was responsible for keeping the books. Swedlund embezzled over \$20,000 in an elaborate scheme of transferring money between accounts and falsifying the company's records. Swedlund was convicted of grand theft and forgery. For the grand theft, she received nine years in the state penitentiary with five suspended. For the forgery, she received four years in the state penitentiary to run concurrent with her other sentence.

Dennis Mallow pleaded guilty to two counts of false representation for filing false discharge monitoring reports with the South Dakota Department of Environment and Natural Resources (DENR). This involved waste water treatment facilities for two homeowner subdivisions, Stage Barn and Black Hawk, in Meade County. He was fined \$2,000 for each count and ordered to serve two days in county jail and 200 hours of community service concurrently for each count. He was also ordered to pay \$3,741 in restitution to Stage Barn, and \$5,950 to Black Hawk. In an unrelated action, Elliot Moser pled guilty to one count of false representation for filing false discharge monitoring reports with DENR arising out of his employment with Homestake Mine in Lawrence County. Homestake discovered the error and self-reported the violation to DENR. Moser was subsequently terminated. He was ordered to pay \$3,000 in fines and costs, and was sentenced to a year in the county jail.

Litigation prosecuted various grand thefts, aggravated assaults, and Class 1 misdemeanors. Sentences in these actions ranged from five years to suspended impositions.

The Litigation Division provided legal counsel to the Boards of Dentistry, Pharmacy, Law Enforcement Officers Standards and Training Commission, Highway Patrol, and the Attorney General's Office of Consumer Protection. Responsibilities include bringing administrative actions against individuals who are licensed and policed by the various boards, opinions on various statutes and rules, and advice as to drafting and implementing administrative regulations.

The Division also provided instruction to law enforcement at the Training Academy. Its attorneys are responsible for the search and seizure portion of the basic eight-week training course for officer candidates, as well as refresher courses for other

law enforcement entities. The Division also conducted moot court training for the Academy, wherein selected officer candidates are examined and cross-examined in a mock DUI setting.

INTER-DIVISIONAL LEGAL ACTIVITIES

Teams of senior attorneys, drawn from the various Divisions, handle a number of Attorney General projects and litigation. Requests for Attorney General's Opinions are handled in this manner. Opinions are drafted by an attorney with expertise in the subject area, and reviewed and approved by three senior attorneys and the Chief Deputy Attorney General prior to final approval by the Attorney General. This office issued 38 opinions in 2000 (1 official opinion, 3 letter opinions, and 34 attorney letter opinions).

DRUG PROSECUTION UNIT (7-1-99 to 6-30-00)

The Drug Prosecution Unit, consisting of five attorneys and two legal secretaries, managed and prosecuted 246 criminal cases during fiscal year 2000. This is a decrease from 276 in fiscal year 1999. The Unit had a 100% conviction rate in FY 00. Drug charges were filed in 15 counties. The type of drugs involved included cocaine, fiorinal, MDMA or ecstasy, methamphetamine, amphetamine, LSD, anabolic steroids, psilocybin mushroom, marijuana and other scheduled substances (such as valium, hydrocodone, darvocet, etc). Methamphetamine still dominates the type of controlled substance prosecutions.

The Unit also handled 212 forfeiture cases in fiscal year 2000. These forfeitures included vehicles, weapons, cash and other assets. Drug dealers still appear to be aware of forfeiture consequences if caught, and therefore the vehicles used in drug transactions are not of a high profile or quality. Forfeited cases are up from 186 cases completed in 1999. The Unit was presented with 16 more vehicles for forfeitures, and received more

federal sharing. However, the unit received less currency forfeiture amounts while at the same time had an increase in 14 currency forfeiture cases. The overall value of assets received for FY2000 was \$504,334. This was an increase from FY1999, which was \$470,598.

The Drug Unit provided training to law enforcement including the DCI, Highway Patrol, Sheriff's Departments, City Police, Law Enforcement Training Academy, and various other branches. Prosecutors and agents also coordinated prosecutions with federal prosecutors to ensure that large, high-profile drug dealers are prosecuted in federal court where generally a stiffer penalty is given. Prosecutors continued to speak out against drug use at community events such as DARE and youth groups.

CONSUMER PROTECTION DIVISION

The Division of Consumer Protection protects consumers and the legitimate business community by investigating, mediating and litigating cases of consumer fraud or misrepresentation. The Division enforces a number of consumer laws designed to protect the public including the Deceptive Trade Practices and Consumer Protection Act and statutes relating to buying clubs, telephone solicitation, telemarketing, and sweepstakes. The Division also advises consumers of their basic rights relating to consumer laws and distributes consumer educational materials; assists in the preparation of consumer protection legislation, and participates in multi-state actions with other state and federal consumer protection agencies. In addition, the Division informs consumers of the complaints that might be on file against a company or common scams and responds to issues involving door-to-door sales; advertising; paid solicitors; new and used vehicle purchases, titles, and repairs; senior citizen rights; landlord/tenant relations; federal credit laws; mail order rules; warranties and

guarantees; charitable solicitations; home repair and construction; employment scams and other areas dealing with retail purchases.

In 2000, the Division recovered a record \$2,071,298.04 for consumers. Approximately 20,000 phone calls were received by the Division and 2170 case files were opened. Division investigators closed 2156 of these files for a recovery rate of 72%.

Cases involving litigation included:

April 11, 2000: South Dakota was part of a multi-state settlement that required United States Sales Corp. d/b/a United States Purchasing Exchange to make dramatic changes in what it tells consumers and to also pay more the \$30 million in restitution to consumers. The agreement requires USPE to provide clear and conspicuous “Sweepstakes Facts” for consumers on the sweepstakes entry form itself, including a statement that the consumer has not yet won, the odds of winning a prize and that a product purchase is not required to win. Over 150 South Dakota consumers were eligible to receive restitution from the settlement. South Dakota received \$20,000.00 to cover costs of the investigation.

June 30, 2000: Settlement was made in a lawsuit brought against B & G Marketing, which is operated by Gene Drong and David Drong. The original complaint alleged that B & G used deceptive practices to sell credit card processing equipment and failed to provide customers a three-day right to cancel. As part of the settlement, the Drongs have agreed to pay civil penalties of \$2,400.00. Also part of the settlement are Merchant Services, Inc and Newcourt Financial Lease Finance Group. Each lease agreement executed by B & G Marketing was on behalf of the two companies. Merchant Services & Lease Finance Group have agreed to make restitution of \$3,621.80 to eight South Dakota businesses and cancel the contracts in question.

August 31, 2000: South Dakota was part of a multi-state lawsuit settlement with Publishers Clearing House. Publishers Clearing House allegedly misrepresented that consumers had won a major sweepstakes prize. Consumers were led to believe that they had won or were about to win a major sweepstakes prize and that they could increase their chances of winning by making additional purchases. South Dakota received \$159,725.12 as their share of the settlement with Publishers Clearing House. A portion of the payment to the state went for consumer education.

August 31, 2000: South Dakota was part of a multi-state lawsuit settlement with Time, Inc. The settlement is requiring Time to change what it tells consumers in its sweepstakes mailings. Time's sweepstakes mailings use the title "Guaranteed & Bonded." The settlement establishes a fund to be used by the Attorneys General for payment to consumers who were high activity sweepstakes customers in any one of the calendar years from 1997 through 1999. In addition, Time will pay the states for attorneys' fees and the costs of the investigation. South Dakota's share of the lawsuit is \$80,242.00. Time is one of the country's largest sweepstakes mailers.

August 31, 2000: As part of a multi-state lawsuit, American Express Publishing Corporation agreed to pay \$200,000.00 directly to the states for the purpose of providing to the individual states reimbursement for their attorneys' fees and other costs. South Dakota received \$3,488.38 for their part of the restitution.

October 16, 2000: As part of a multi-state lawsuit, South Dakota has reached a settlement with U.S. Bank a/k/a U.S. Bancorp, resolving claims that U.S. Bank sold its customers' information, including names, addresses, telephone numbers, account numbers, and other sensitive financial data to marketers, even though its privacy policy stated that customer information would be kept confidential. Under the terms of the

settlement, U.S. Bank agreed to stop sharing customer account information with third parties for purposes of marketing non-financial products and services. In addition, the bank must make refunds to credit card holders whose information was provided to marketers and who purchased a product or service but did not use it. U.S. Bank also agreed to inform consumers in writing of its privacy policy and the customer's right to "opt out" of information sharing. Settlement in the amount of \$68,965.51 was made.

November 14, 2000: In December 1994, EWC, Inc. filed chapter 11 bankruptcy. As directed by the reorganization plan, EWC was authorized to pay \$7,263.82 as final distribution in this case. All funds collected in this case are to be used to fund some type of education program for consumers.

MEDICAID FRAUD CONTROL UNIT

Year 2000 was a year of transition for the Medicaid Fraud Control Unit (MFCU). The MFCU's senior auditor retired after more than fifteen years of service and a new director began in February 2000. The MFCU opened 31 cases and reviewed over 100 complaints of alleged fraud, abuse, neglect, and financial exploitation. The MFCU obtained two criminal convictions and resolved several other cases with civil settlement agreements. The MFCU recovered \$173,440.39 for the Medicaid Program, \$13,012.77 for elderly victims of Exploitation; \$5,572.18 for investigative costs; and \$5,286.00 for court fines and costs.

The MFCU obtained a felony conviction against David A. Johnson, the owner and operator of Southeast Shuttle Ambulance Service of Flandreau, who pled guilty to Unlawfully Obtaining Benefits or Payments from the Medicaid Program. Johnson was accused of using numerous billing schemes to falsely obtain money, such as claiming payment for services never performed, filing claims for non-medically necessary

services, and upcoding the services that were provided. The Court ordered Johnson to serve five years probation, pay a \$5,000.00 fine, and pay \$52,000 restitution to the Medicaid Program.

The MFCU also obtained a criminal conviction against Carliss Meyers, an employee of the South Central Adjustment Training Center in Winner. Meyers was accused of writing checks for her personal use on the accounts of several residents of the Adjustment Training Center. She pled guilty to misdemeanor theft and paid restitution to all of the victims.

The MFCU resolved several matters with civil settlement agreements, including a long-standing dispute with Apria Healthcare Inc, a durable medical equipment provider. During the period of time under investigation, Apria had merged with another company and, as a result of merging the two billing systems, had double billed the South Dakota Medicaid program for numerous claims. In addition, Apria had failed to follow South Dakota administrative rules by failing to document patients' equipment needs and uses. Apria agreed to repay the Medicaid program over \$40,000 and reimburse the MFCU's investigative costs.

The MFCU also entered into a settlement with Scott Iverson of Vermillion. Iverson had allegedly taken over \$100,000 from his father's trust accounts, which should have been spent on his father's nursing home bills. As a result of Iverson's thefts, the Medicaid program was required to pay for his father's final care. The MFCU agreed to defer prosecution of the case on the condition that Iverson repay the Medicaid program all of the money expended on his father's care.

The MFCU entered into civil agreements with James Valley Nursing Home in Redfield and with Helping Hands assisted living center in Brandon. In each case, the

institutions were accused of accepting payments from residents and their families over and above the amounts to which they were entitled under the Medicaid program. Both cases were settled with the homes' agreements to repay the money.

The MFCU continued to be involved with and pursue cases on a national level in cooperation with the National Association of Medicaid Fraud Control Units and with MFCU's from various states. A national case was resolved with National Jewish Medical Research Center in Denver, Colorado. An audit performed by the Colorado MFCU, after the Center's self-reporting, indicated overcharges to several state Medicaid programs including \$8,243.30 from South Dakota.

The MFCU continues to be involved with several ongoing investigations on a national level. As of the start of 2001, the MFCU has approximately two dozen investigations under way in South Dakota, and continues to reach out to victims of fraud, exploitation, abuse, and neglect.

FINANCE OFFICE

The Finance Division is responsible for budget, accounting, personnel and purchasing functions on behalf of the other divisions within the Office.

The budget function includes assisting in the preparation, submission and justification of budgets, preparing and processing budget transactions, and monitoring budget balances.

The accounting function includes processing all accounting transactions; balancing each fund's cash; preparing all reports required for the statewide financial statements and by federal grant programs, and drawing federal cash on a timely basis.

The personnel function includes assisting employees with questions and complaints; processing employee timesheets; and assuring that employees and supervisors comply with Federal and State personnel rules and regulations.

The purchasing function includes assuring that low bids determined by the State's Purchasing Office are used for purchases of supplies and capital assets, and assuring that capital asset purchases are recorded on the State's Central Inventory System.

The budget for Fiscal Year 2000 was \$12,059,651. Of that amount 36% is general funds, 42% is federal funds and 22% is other funds. Federal funding continues to be the area that is showing the most growth.

LEGISLATION

During the 2000 Legislative Session, the Attorney General sponsored three pieces of legislation. Senate Bill 20 created the new crime of identity theft to address those situations that cannot be prosecuted under existing statutes. This bill was passed by both houses and was signed into law by the Governor. Senate Bill 21 would have allowed the posting of sex offender information on the Internet. This bill died in the House Judiciary Committee, by one vote. Senate Bill 22 gives judges the option of revoking the driver's license of persons convicted of vehicular homicide for any period of time, including for the life of the offender. Several States' Attorneys and members of the judiciary requested that the Attorney General introduce this bill. The legislature approved this bill and the Governor signed it into law. The Office of Attorney General monitored 155 bills and testified on 34 pieces of legislation.

DIVISION OF CRIMINAL INVESTIGATION

The Division of Criminal Investigation is a comprehensive statewide law enforcement agency made up of the Division of Criminal Investigation (DCI), State Forensic Laboratory and Law Enforcement / 911 Training (LET). The Division of Criminal Investigation operated with a 2000 annual budget of approximately 5.78 million dollars, and 58 employees.

DCI

DCI assists local law enforcement agencies and prosecutors in the investigation of major crimes through 37 specialized agents stationed in twelve regional sites throughout the State. These agents are certified law enforcement officers and provide expertise in the investigation of homicides, rapes, narcotics/ dangerous drugs, child abuse, arson, white collar crime, explosives, outlaw motorcycle gangs, and burglaries. DCI also provides specialized service in the area of polygraph examination, hostage negotiations, composite art, and expert courtroom testimony.

DCI agents provide training to local law enforcement officers. Agents provide 30 percent of the Law Enforcement Basic Academy training. The agents also fulfill many requests to provide training on a local level to police departments and sheriff's offices. All agents are certified as classroom instructors. The majority of agents are also firearm instructors and hostage negotiators.

DCI works with federal agencies to help coordinate new programs that will benefit the State by reducing targeted problematic criminal activity.

In 1996, South Dakota was designated as part of a high intensity drug trafficking area (HIDTA), thus qualifying for federal funds to specifically target methamphetamine

abuse and trafficking. The HIDTA program expanded in 2000 to include all drugs, while still maintaining an emphasis on methamphetamine. Two HIDTA analyst positions have been added to perform support functions, including intelligence analysis, statistical analysis and administrative functions. HIDTA/Meth arrests for 2000 totaled 352. In 1998, two teams of East River and West River agents were trained and equipped by HIDTA as first responders to potential meth laboratories. Each team was re-certified in 1999 and 2000.

DCI continues to coordinate and pass through federal money designated for marijuana eradication. The funding is allocated to eligible counties for the identification and eradication of marijuana. A total of 70,983,561 plants were eradicated in 2000.

DCI maintains identification records and criminal history information for the state of South Dakota. All fingerprint cards/images (which include civil and law enforcement applicants, sex offenders as well as criminals) are processed in the Identification Section and all but civil images are stored at Division headquarters. Fingerprint identification technicians maintain over 168,586 criminal record subjects. The DCI continues to upgrade its identification section by further development and maintenance of the Automated Fingerprint Identification System (AFIS), which allows fingerprint technicians to scan fingerprint cards or images submitted electronically into a database for easy storage, retrieval, and comparison. DCI's database is interconnected with the Minnesota and North Dakota databases for sharing of information known as the Midwest Automated Fingerprint Identification Network (MAFIN). This allows law enforcement agencies with AFIS to generate suspect lists from fingerprint data. AFIS gives DCI the capability of real time identification of a suspect in investigations, based on fingerprints found at the scene of a crime. In September of 1999, the Brown County

Sheriff's Office along with the Aberdeen Police Department became the first local law enforcement agencies to submit live scan images electronically to the DCI, thus eliminating the mail time for previously sent paper arrest records. In March of 2000, Pennington County started to report their arrests via live scan technology, followed by Minnehaha County in August of 2000. In May of 2001, three more live scan workstations were installed in the Hughes, Davison and Lawrence County Sheriff's Offices.

DCI is the agency designated to receive and maintain a registry for sex offenders in the state of South Dakota. All who are defined as sex offenders by statute must provide information for the sex offender database. The DCI monitors and updates the registry list continually and does annual address verifications. In 2000, there were 1,148 registered sex offenders living in the state.

The DCI has a criminal Intelligence Unit that assists local and federal government by collecting, analyzing and disseminating criminal intelligence information to support investigative functions. The Unit serves as manager and database center for the S.D. Law Enforcement Information Network (LEIN). There are currently 118 member agencies that participate in quarterly LEIN information sharing meetings and submit their intelligence information to the central database. The database, which was reprogrammed in 1998 to ensure Y2K compliance, contains approximately 6,192 separate intelligence reports. In 2000, there were 946 LEIN reports processed and added to the database. The Intelligence Unit is currently working with the Department of Justice on LEIN compliance issues so that the database can become a node on a secure law enforcement Intranet. LEIN members will then be able to access/share intelligence reports 24/7 via the secure Intranet. The Intelligence Unit

also provides fast, accurate criminal statistical data to serve the needs of investigators and policymakers. The criminal analyst provides investigative services such as phone toll analysis, major case analysis, graphical displays and courtroom testimony on a case-by-case basis. The Intelligence Unit is also the liaison for Interpol, FinCEN, EPIC, and the statewide Missing Persons Clearinghouse.

The services provided by DCI in 2000 include 625 investigations; 49 polygraph examinations; processed 26,202 criminal fingerprint cards; conducted 11,108 noncriminal background checks; processed 57,005 FBI/III records with state responsibility; compiled 123,671 criminal record checks; updated 35,744 criminal records; filed and tracked 1,148 sex offenders; and seized \$1,000,000 dollars worth of drugs.

STATISTICAL ANALYSIS CENTER (SAC) The Center's primary function is to serve as the clearinghouse in South Dakota for criminal justice statistical data. This includes collecting, analyzing, and reporting statistics on crime and related issues. The information is then shared with local, state, and federal agencies, and other interested entities. Crime in South Dakota is the annual publication that presents the compiled crime data. Other information gathered includes: summary data from the South Dakota Drug Abuse Warning network (SDDAWN); lab data collection forms; updates for the Criminal Justice Directory; hate crime reports for the FBI; monthly penitentiary information; and quarterly reports from the Criminal History database.

The SAC also functions as the FBI clearinghouse for Uniform Crime Reporting (UCR) data and is the lead agency in the implementation of the National Incident Based Reporting System (NIBRS). NIBRS, which will eventually replace UCR, provides incident-specific information and details about criminals and their victims. The NIBRS

software was rewritten in Access, and efforts continue to encourage participation by South Dakota law enforcement agencies. The new software allows for more complete, accurate and timely crime statistics and includes many report generators. South Dakota became a NIBRS-certified state with the FBI in early 2001.

TASK FORCE ON DRUGS This office serves as the administering entity of federal grant monies from the U.S. Department of Justice through the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program. Funds are provided to assist state and local units of government in carrying out programs that improve the functioning of the criminal justice system and enhance drug control efforts.

In addition to administering the Byrne funding, staff coordinated with the Governor's Office and the Division of Highway Safety to distribute monies from the Local Law Enforcement Block Grant Program.

The Statewide Strategy for Drug and Violent Crime Control includes the following priorities: 1) increase the manpower and other resources needed to address the drug and violent crime issues facing the law enforcement community in the State; 2) increase the manpower and other resources needed to address the drug and violent crime issues facing the prosecution community in the State; 3) provide institutional treatment programming for the chemically dependent offender; and 4) provide programming to meet the identified needs of adjudicated juveniles. During FY00, in response to the first and second priority, the following programs were funded through the Office of Attorney General:

STATE MULTI-JURISDICTIONAL DRUG TASK FORCE The purpose is to provide support to State and local law enforcement and prosecution agencies in developing multi-agency projects to investigate and prosecute narcotics traffickers and

conspirators. Coordination efforts continue on a statewide basis. Ten (10) DCI agents are funded through Byrne funds to address drug and violent crime offenses. DCI agents handled 270 cases in 2000. There were 4,214 drug-related arrests (statewide) in 2000.

STATEWIDE DRUG PROSECUTION PROGRAM COMPONENT OF THE STATE MULTI-JURISDICTIONAL DRUG TASK FORCE The information on this program is located under the DIVISION OF LEGAL SERVICES (DRUG PROSECUTION UNIT) and is not duplicated here.

STATE FORENSIC LAB DNA PROJECT The goal of the project is to provide funding assistance to analyze samples of biological physical evidence associated with violent crimes utilizing forensic PCR DNA STR testing methods and to provide training opportunities to staff responsible for performing these analyses. Objectives include: training two lab employees at training facilities outside of South Dakota in PCR DNA STR typing; purchasing supplies and capital assets essential for validating forensic DNA testing procedures; and within a year, offer DNA PCR STR testing on physical evidence samples collected during violent crime investigations.

The South Dakota Forensic Lab will adhere to regulations developed and disseminated by the United States Attorney General with the assistance of the FBI and the National Institute of Justice regarding program development or improvement of the capability to analyze DNA for identification purposes. The Director of the Forensic Lab received notification in June 1998 from the FBI that a set of 13 core Short Tandem Repeats (STR) loci had been approved as the current standard for forensic DNA testing results compatible with the National DNA Index System (NDIS) combined DNA Index System managed by the FBI.

To date, program accomplishments include: advanced training completed by one Criminalist and continuing for a second criminalist; four out of ten experimental samples of physical evidence analyzed by the South Dakota Forensic Lab DNA analysts have been evaluated by the Minnesota Bureau of Criminal Apprehension Lab DNA technical leader/expert for accuracy and completeness; the fourteen required standards established by the DNA Advisory Board and the American Society of Crime Lab Directors are being incorporated into the Forensic Lab's DNA testing services; lab personnel coordinated use of PCR DNA testing in numerous court cases; validation testing, sample collection and analysis supplies were purchased for the Perkin-Elmer 310 Genetic Analyzer; and information is provided to local, state, and federal law enforcement and states and prosecuting attorneys on a regular basis about the genetic characteristics of body fluids/tissues recovered at crime scenes. Lab staff performed 191 violent crime investigations.

LAW ENFORCEMENT TRAINING

Law Enforcement Training (LET) operates on an annual budget of approximately \$943,000 with nine employees, and provides basic and advanced training to South Dakota law enforcement officers and all 911 telecommunicators terminal operators. LET also provides training to prosecutors and correctional officers, and provides auditing of agencies for NCIC records and III compliance. Courses are taught at the training academy in Pierre and at field sites throughout the state. LET trained 3,762 students in FY 2000.

All South Dakota law enforcement officers and 911 telecommunicators must be certified within their first year of employment. Officer certification is usually achieved by completing the twelve-week basic certification course at the academy; 911

telecommunicator certification requires a two-week course. Officers and 911 telecommunicators currently certified in another state may take a reciprocity exam. If successful, they need to attend only a portion of the basic course to obtain their South Dakota certification. LET currently offers three law enforcement sessions and three 911 sessions per year.

Advanced training covers the entire spectrum of law enforcement topics.

Advanced training courses include:

- Homicide Investigation
- Domestic Violence
- Advanced Accident Investigation
- Advanced DWI
- SigArms Tactical Pistol Instructor
- Interview and Interrogation
- Pedestrian/Bicycle Crash Investigation
- Radar Instructor
- Rapid Deployment to High Risk Incidents
- Drug Impaired Driving
- DARE
- DARE Jr. High Instructor
- Radar Operator
- New Sheriff Training
- Applied Physics for Accident Investigation
- Prosecutor Training
- Community Policing
- Instructor Methods
- Firearms Simulator
- Cold Case Homicide

LET, through the Law Enforcement Standards and Training Commission, awards grants to local law enforcement agencies to host their own training. The grant program was established in 1993 to allow departments to bring in the training they felt was essential to their department, but not currently offered through LET. Ten grants were awarded and a total of 223 people were trained.

LET monitors the certification of approximately 1,600 officers and 280 911 telecommunicators in South Dakota. Certain types of officer or telecommunicator

misconduct may cause certification to be reviewed and suspended or revoked. An officer or telecommunicator who loses certification through revocation or suspension is no longer eligible to work as a law enforcement officer or telecommunicator in South Dakota.

LET is also responsible to certify police reserve units and 185 police reserve officers. Each law enforcement officer who attend the Basic Course is mandated to perform an eight hour community policing project. This program has been in place for about three years and has resulted in officers donating several thousand hours of work in the Pierre/Ft. Pierre area at a variety of organizations such as the YMCA, local churches, Missouri Shores Domestic Violence Shelter, Civil Air Patrol, City of Pierre and area retirement homes.

One project that has been extremely popular is the officer mentor program with the Pierre Indian Learning Center (PILC) students. Over the past three years, about 150 officers have mentored with kids at PILC. This program has been well received by the kids at PILC and their police mentors. The mentor program is a success story that has the potential for positive long term impact.

The State Coordinator of Drug Abuse Resistance Education (DARE) training operates out of LET. The State Coordinator trains and evaluates all DARE instructors and ensures that a uniform curriculum is instructed statewide. Currently, there are 141 active DARE officers who have been trained by LET, providing instruction at 214 schools and 132 cities in the State. Annually, DARE instructors reach 14,100 students in kindergarten through senior high and their parents.

STATE FORENSIC LABORATORY

Nine employees operate the State Forensic Lab. During 2000, laboratory personnel managed and conducted scientific examinations on physical evidence submitted by South Dakota law enforcement agencies. This included the receipt of 403 felony cases involving 3908 items submitted with 729 examinations assigned. Seven examiners conducted 3973 examinations on 14055 items and they completed 430 lab reports. They made 28 court appearances regarding their examination reports. The lab assisted law enforcement with eleven felony crime scenes and field investigations, conducted 117 CODIS (Combined DNA Identification System) searches, repositied 200 blood and biological (buccal swabs) samples from convicted SD violent and sex offenders for genetic marker (DNA) databasing, devoted 301 hours on AFIS (Automated Fingerprint Information System) searching 96 latent fingerprints recovered at crime scenes and conducted 7351 reverse fingerprint searches attempting to identify latent fingerprints that have been entered into MAFIN (Midwestern Fingerprint Information Network). Seventeen firearms were entered into DRUGFIRE. The lab cooperates with private medical facilities, SD Department of Health and law enforcement by providing procedures and facilitating materials acquisition used in managing, collecting and examining sexual assault evidence. The forensic lab provides the Department of Corrections, regional jails and law enforcement with directions and materials used in collecting biological samples, cheek (buccal) swabs, from convicted violent offenders that will tested for DNA and incorporated in the convicted offender DNA database. To date there are more than 1900 individuals' DNA that have been examined and are in South Dakota's genetic marker (DNA) database of violent offenders. This DNA database is an investigative tool for SD law enforcement.

Lab personnel continue to be involved with coordinating PCR DNA testing by forensic DNA testing laboratories with law enforcement in active criminal investigations and the judiciary in court cases. Lab personnel teach lab capabilities to the General Law Enforcement Training Sessions, Highway Patrol Recruit classes, latent fingerprint recovery procedures as requested by law enforcement on and off site, and attend to informational requests made by law enforcement, attorneys and others.

Forensic laboratory examinations performed by the lab include blood stain pattern interpretation; trace evidence-hair, soil, fiber and glass examinations and comparisons; processing evidence for presence of latent fingerprints and conducting fingerprint examinations and comparisons for identification. The lab also conducts muzzle to target distance determinations; physical fracture matching; protective surface coating examinations; serology; shoe and tire impression examinations; and crime scene assistance.

The Forensic Lab anticipates completing validation of forensic PCR DNA STR analysis during the first quarter of calendar year 2001 (see DNA report on page 30) and continues to proceed towards voluntary laboratory accreditation offered by the American Society of Crime Lab Directors/Lab Accreditation Board. One Criminalist, hired in June, 2000, is participating with a two year training program in forensic firearms and toolmarks. Upon completion of this training, it is anticipated she will meet certification standards set by the American Firearms and Toolmarks Examiners.